

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 6433	DATE	October 20, 2010
CASE TITLE	William O. Spivey (K-81482) v. Unknown Stateville N.R.C. Counselor		

DOCKET ENTRY TEXT:

Plaintiff's motion to proceed *in forma pauperis* (Doc [3]) is denied without prejudice. Plaintiff's complaint is dismissed without prejudice. Within 30 days of the date of this order, Plaintiff must: (1) either submit a completed *in forma pauperis* application or prepay the \$350 filing fee, and (2) submit an amended complaint that identifies at least one defendant by name. The clerk shall send to Plaintiff an *in forma pauperis* application and an amended complaint form. The clerk shall also send a copy of this order to the Pinckneyville Correctional Center trust fund office. Trust fund officers at Pinckneyville should provide Plaintiff with information and documents needed for his *in forma pauperis* application. Plaintiff's failure to comply with this order within 30 days may be construed as his desire not to proceed with this case and will result in dismissal of the case with prejudice. Plaintiff's motion for the appointment of counsel (Doc [4]) is denied without prejudice.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff, William O. Spivey (a.k.a. Kyeane Michelle) (K-81482), currently incarcerated at Pinckneyville Correctional Center, filed this 42 U.S.C. § 1983 complaint against an unknown counselor at the Stateville Correctional Center N.R.C. (Northern Receiving Center). Plaintiff asserts that in December 2009, the Stateville counselor indicated on a form that Plaintiff was Protestant when in fact he is Jewish. Plaintiff states that he has requested several times for the counselor to change the form, but she refused. Plaintiff alleges that each prison where he was subsequently transferred, including Pinckneyville, refuses to acknowledge he is Jewish and denies him vegetarian kosher meals because NRC still indicates that he is Protestant.

Plaintiff's current application to proceed *in forma pauperis* is incomplete. It includes neither a copy of his prison trust fund account for a six-month period preceding his filing of this complaint, nor a certificate by an authorized officer stating the average balance of Plaintiff's trust fund account. The issue of the filing fee must be resolved before this case can proceed forward.

The Prison Litigation Reform Act requires all inmates to pay the full filing fee. If an inmate is unable to prepay the \$350 filing fee, he may submit an application to proceed *in forma pauperis*, which allows the inmate to pay the filing fee in installments. The *in forma pauperis* application must be on this court's form. If the court grants the inmate's application, the court will direct correctional officials to deduct an initial partial payment of the filing fee directly from the inmate's trust fund account, and to make further monthly deductions from that account until the full filing fee is paid. To enable the court to determine if Plaintiff qualifies to proceed *in forma pauperis*, Plaintiff must submit with his application "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . , obtained from the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2).

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STATEMENT (continued)

Although Plaintiff submitted an *in forma pauperis* application, the section requesting a certificate by an authorized officer is blank. Plaintiff indicates on the form that he has had difficulty obtaining a certificate and a copy of his trust fund account statement from the Pinckneyville trust account office. Accordingly, the court requests the clerk to send a copy of this order to that office. The court also requests that trust fund officers at Pinckneyville provide Plaintiff with a certificate and a trust fund account statement if they are able to do so. Despite Plaintiff's alleged impediment to submitting a completed IFP form, he must either file a completed form or prepay the \$350 filing fee to proceed with this case. Failure to comply with this order within 30 days of the date of this order will result in summary dismissal of the case with prejudice.

Additionally, Plaintiff's complaint does not identify a defendant by name. Rather, he names an unknown Stateville NRC counselor. In order for this case to proceed, the complaint must be served on a defendant. If Plaintiff does not know the name of the counselor, he may refer to that defendant as John or Jane Doe and also name as a defendant a supervisory official at Stateville, such as Warden Marcus Hardy for the purpose of identifying the unknown counselor. *Billman v. Indiana Dept. of Corrections*, 56 F.3d 785, 789-90 (7th Cir. 1995). Once an attorney enters an appearance for the named defendant, Plaintiff may send discovery to the attorney to learn the name of the unknown counselor.

If Plaintiff submits an amended complaint, he should write the number and judge assigned to this case on the amended complaint and submit a judge's copy and a service copy for each named defendant. Plaintiff is advised that an amended complaint replaces a previously filed one, and the court will refer only to the amended complaint when determining Plaintiff's claims and the defendants to this action.

Therefore, in order for Plaintiff to proceed with this case, within 30 days of the date of this order, he must: (1) either submit a completed *in forma pauperis* application or prepay the \$350 filing fee, and (2) submit an amended complaint that identifies at least one defendant by name. Failure to comply with this order may be construed as Plaintiff's desire not to proceed with this case and will result in summary dismissal of the case.



Dated: October 20, 2010

CHARLES P. KOCORAS
U.S. District Court Judge